IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 156 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME TAX

Versus

MOTICHAND VIRPAL SHAH

Appearance:

1. INCOME TAX REFERENCE No. 156 of 1986

MR MANISH R BHATT for Petitioner No. 1

MR KH KAJI for Respondent No. 1

CORAM : MR.JUSTICE A.R.DAVE
and
MR.JUSTICE D.A.MEHTA

Date of decision: 23/07/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE A.R.DAVE)

1. At the instance of the revenue, the following two questions have been referred to this Court by the Income Tax Appellate Tribunal, Ahmedabad Bench `B', for its opinion under the provisions of Section 256(1) of the Income Tax Act, 1961 (hereinafter referred to as "the Act").

(i) "Whether on the facts and in the circumstances of the case, the Tribunal was justified by its subsequent order dated 21.4.1984 in revising its original order dated 26.2.1983 dismissing the assessee's appeal, and allowing the assessee's appeal on the ground that there was apparent mistake in the original order?"

(ii) Whether on the facts and in the circumstances of the case, the Tribunal was justified in holding that the ITO had not rightly invoked the provisions of Section 155 (7A) of the Income Tax Act, 1961?"

2. We have heard learned advocate Shri Akil Kureshi appearing for the revenue, and learned advocate Shri Manish Kazi for the respondent-assessee.

3. The short facts which are absolutely necessary for the purpose of disposal of this reference are as under :-

The Income Tax Officer passed rectification order under Section 155 (7-A) in relation to assessment year 1972-73.

5. Being aggrieved by the said order, the assessee filed an appeal before the appellate authority but the said appeal was dismissed. Thereafter the assessee filed an appeal before the Tribunal and the Tribunal ultimately held that the Income Tax Officer was not right in invoking the provisions of Section 155 (7A) of the Act.

6. First of all we shall refer to the second question which has been referred to us for our opinion. It is relevant to note that Section 155 (7A) was inserted by the Finance Act, 1978 with retrospective effect from 1st April, 1974. Thus the provisions of Section 155 (7A) were not in force before 1st April, 1974 and therefore,

in our opinion, the assessing officer could not have invoked the said provision for the assessment year 1972-73. For the above referred reason we are of the opinion that the Tribunal was absolutely right in coming to the conclusion that the assessing officer had not rightly invoked the provisions of Section 155(7A) of the Act. We therefore, answer question No.2 in the affirmative i.e., in favour of the assessee and against the revenue.

7. Looking to the answer given to the second question, in our opinion it is not necessary to answer the first question and therefore we decline to answer the first question.

The reference stands disposed of accordingly with no order as to costs.

23.7.2001. (A.R. Dave, J.)

(D.A. Mehta, J.)

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